



*rec'd by COB
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Mr. John P. Galligan
Director, Card Technology Division
Financial Management Service
U.S. Department of the Treasury
Room 526, Liberty Center
401 14th Street, S.W.
Washington, D.C. 20227

RE: **Electronic Benefits Transfer; Selection and Designation of Financial Institutions as Financial Agents (1510-AA59)**

Dear Mr. Galligan:

The Independent Bankers Association of America (IBAA) is pleased to comment on the Financial Management Service (FMS) proposal establishing rules for the selection and designation of financial institutions as Financial Agents for the Direct Federal Electronic Benefits Transfer (EBT) program. IBAA represents 5,500 independent community banks nationwide with more than 15,000 locations that hold nearly \$375 billion in insured deposits, \$445 billion in assets, and more than \$240 billion in loans for consumers, small businesses and farms in the communities they serve. IBAA members also employ more than 200,000 people in their communities.

Background

The Direct Federal EBT program will provide access to Federal program benefit payments through electronic funds transfer (EFT) to individuals **who do not have an account at a financial institution**, generally referred to as "unbanked" recipients. Benefits subject to disbursement through the Direct Federal EBT program include Social Security Old Age, Survivor, and Disability Insurance, Supplemental Security Income, Black Lung, Railroad Retirement, Veterans Compensation and Pension, Civil Service Retirement and Disability and Federal wage and salary payments.

The Debt Collection Act of 1996 requires all Federal payments, except tax refunds, to be converted from checks to EFT by January 1, 1999. Federal benefit recipients with bank accounts will receive their benefits by Direct Deposit. The FMS hopes that the approximately 10 million unbanked Federal benefit recipients will become "banked" as a result of public and private sector educational and marketing efforts. However, it is likely that a certain percentage of these individuals will remain unbanked by the January 1, 1999 deadline. Therefore, the Treasury must have in place payment systems, such as EBT, which will permit the electronic delivery of funds to unbanked benefit recipients.

207.007

Financial Agent Duties

The proposed new regulations (31 CFR Part 207) describe how the FMS will implement its Direct Federal EBT program through the selection and designation of financial institutions as Financial Agents of the Treasury, and specifies the duties of such Financial Agents.

In summary, under the proposed regulations the Financial Agent duties include:

- Establishing an account in the name of the recipient. The account must be eligible for Federal deposit insurance and may be closed only at the direction of the FMS.
- Crediting to such an account Direct Federal payments received through the ACH. The Financial Agent also may credit to the account payments from a State EBT program.
- Issuing to each unbanked recipient a debit card bearing the Benefits Security Card® service mark which will permit the recipient to access the account via ATM and POS terminals.
- Providing service to Benefit Security Card® holders on such terms as the FMS specifies in an Invitation for Expression of Interest (IEI) or in the Financial Agent Agreement between the FMS and the Financial Agent.
- Performing such other duties as the FMS may specify.
- In performing the duties described above, the Financial Agent shall act solely as the agent of the United States and not as the agent of the unbanked recipient, and shall be accountable only to the Treasury.

IBAA Position

Recognizing the overall benefits of a more efficient disbursement mechanism for the delivery of benefits to recipients without bank accounts, the IBAA generally supports EBT provided community banks have the ability to participate competitively in the program. Given that the Direct Federal EBT program is in its infancy, there is considerable apprehension on the part of community bankers, about the program. Many community bankers are uncertain as to the role(s), if any, their banks will play in the Direct Federal EBT program. The IBAA appreciates FMS efforts to address much of this uncertainty through the issuance of regulations regarding the selection and designation of financial institutions as Financial Agents of the Treasury and the duties of such Financial Agents. Moreover, these regulations, once adopted, will assist community banks in assessing the merits of program participation. IBAA's comments on specific

aspects of the proposed regulations follow below.

Principal-Agent Relationship

The designation of a financial institution as a Financial Agent creates a principal-agent relationship between the Treasury and the Financial Agent. In this instance the agent acts upon the instructions of the principal, the Treasury, and answers only to the principal. Under the proposed rule, the Financial Agent acts not as agent of the recipient but as agent of the United States in establishing the account and providing service. Therefore, the Financial Agent opens an account for an unbanked recipient at the direction of Treasury and may close the account only at Treasury's direction. Furthermore, the Financial Agent is accountable only to Treasury, and Treasury will hold the Financial Agent responsible for the performance of these duties.

Account Closures

The role of the Financial Agent, as noted in the proposed rule, is cause for consternation on the part of the IBAA member banks, in that Treasury determines when the account of the recipient can be closed. Unfortunately, fraudulent acts resulting from both passive and active involvement of traditional bank account holders is quite prevalent. We believe that Direct Federal EBT program participants may also be involved in fraudulent activity.

The IBAA strongly urges the FMS to incorporate a system or a process of recourse to permit Financial Agents to close Direct Federal EBT accounts in cases of fraud on the part of the benefit recipient, upon proper notification of the Treasury. In addition, the Financial Agent, in the instance of other abusive or destructive behavior on the part of the benefit recipient, should have the right to close the recipient account upon proper notification of the Treasury.

Alternatively, if the FMS does not provide a process for Financial Agent closure of accounts in the instances referenced above, the IBAA believes that the U.S. Treasury should reimburse financial institutions for losses resulting from fraudulent, abusive or destructive behavior.

Other Duties

The proposed regulation states, the Financial Agent will "perform such other duties as the FMS may specify" in addition to those duties explicitly stated in the proposed regulation. The flexibility afforded FMS in this portion of the regulation could very well be to the detriment of the Financial Agent agreeing to perform these as yet undefined duties. IBAA recommends that all duties of the Financial Agent be articulated in the regulation. A clear delineation of all Financial Agent duties would greatly assist financial institutions in their evaluation of potential program participation.

Benefit Security Card

IBAA, Federal EBT

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Under the proposed rule, the Financial Agent is required to issue to each unbanked recipient a debit card bearing the Treasury's registered service mark for EBT, the Benefit Security Card®. The card identifies the recipient with the Direct Federal EBT program. The recipient is able to use the card at ATMs and point-of-sale terminals on the terms and conditions specified by Treasury. IBAA believes the FMS intends for the card to be used in conjunction with regional network marks, so that existing network infrastructures can be used. As a member of the National Automated Clearing House Association's EBT Council, IBAA concurs with the Council's recommendation that the FMS modify section 207.3(a)(4) of the proposed regulations to explicitly permit the use of the Benefit Security Card mark in conjunction with other marks on the card or terminals.

The FMS is silent as to whether the FMS would provide the Benefit Security Card® to the Financial Agent, and as to who would pay for the cost of production and distribution of the Benefit Security Card®. Additional information regarding these issues would be most beneficial to any financial institutions considering participation in the Direct Federal EBT program.

Compensation

The proposed regulation makes no mention of compensation for performance of duties by the Financial Agent. We recommend that the FMS expressly address compensation, or the lack thereof, in the governing regulation. The IBAA urges the FMS to provide a revenue stream, either from the U.S. Treasury or the benefit recipient, to the Financial Agent to offset operating costs. The specific terms of compensation should be addressed in the Invitation for Expression of Interest or in the Financial Agent Agreement. Compensation should be reasonable with strong consideration given to the operational and maintenance costs associated with this type of account.

Conclusion

IBAA continues to support the Direct Federal EBT program and the laudable goal of providing reduced cost and greater efficiency in the delivery of Federal benefits. We urge the FMS to consider the important issues we have raised in this comment letter. We sincerely hope that the FMS takes these concerns into consideration in moving forward with the development of regulations regarding the Direct Federal EBT program.

Thank you for the opportunity to comment.

Sincerely,



Thomas J. Sheehan
Chairman

IBAA Bank Operations Committee
and
President
Grafton State Bank
Grafton, WI